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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 BEVERLY NEHMER, et al.  
11 Plaintiffs,

12 v.

13 UNITED STATES DEPARTMENT  
14 OF VETERANS AFFAIRS,  
15 Defendants.  
16

No. C86-6160 TEH

PRE-HEARING ORDER RE  
CLL CLAIMS PROCEDURE

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19 The Court has received and thoroughly reviewed the parties' responses to the Court's  
20 August 8, 2006 Order re CLL Claims Procedure. The Court will address the issues raised in  
21 those responses at the in-court hearing scheduled for September 18, 2006 at 2:00 p.m.  
22  
23 However, one issue calls for immediate response. Defendant has taken the position  
24 repeatedly that the "VA's adjudication resources remain a zero-sum game," so that resources  
25 devoted to *Nehmer* class claims necessarily result in prejudice to non-class veterans. (Def's  
26 Response, filed 8/14/06, at 8:14-15). The Court rejects this line of argument as inconsistent  
27 with the authority of the Court to order remedies that may increase the level of resources – in  
28

1 terms of personnel, finances, or otherwise – that a defendant may be required to undertake to  
2 meet its legal obligations under a federal court order. *See, e.g., Swann v. Charlotte-*  
3 *Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971); *Toussaint v. McCarthy*, 801 F.2d  
4 1080, 1110 (9th Cir. 1986).

6 Further, in anticipation of the September 18<sup>th</sup> hearing, the Court orders that the parties  
7 submit a joint pre-hearing statement by September 11, 2006. The statement shall address,  
8 *inter alia*, the following issues:

- 10 1. The current status of defendant's CLL claims procedure, including the current and  
11 anticipated rates of processing, and whether a workforce of twelve Rating  
12 Veterans Service Representatives (RVSRs), with eight supervisors, is a reasonable  
13 staffing allocation to meet defendant's legal obligations;
  - 14 2. All unresolved areas of dispute regarding plaintiffs' access to information, with  
15 explanations from plaintiffs as to their need for the information and from  
16 defendant as to their reason(s) why access should be denied; the parties shall be  
17 mindful that the Court expects plaintiffs to have reasonable access to information  
18 so that they can make informed judgments as to defendant's implementation of the  
19 Court's orders;
  - 20 3. Whether the Court should appoint a court expert, at defendant's expense, with full  
21 access to defendant's records and facilities, to advise the Court as to the efficiency  
22 and reasonableness of defendant's process and output; and
  - 23 4. Any other issues the parties believe are relevant to the CLL claims procedure.
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1 The parties shall be fully prepared to discuss these issues at the September 18<sup>th</sup> hearing as  
2 well.  
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5 IT IS SO ORDERED.  
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8 Dated: 8/29/06



HON. THELTON E. HENDERSON  
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California